

ENSafrica tax in brief

Below, please find issue 27 of ENSafrica's tax in brief, a snapshot of the latest tax developments in South Africa.

case law

- **Tax Court, Johannesburg | *ABC Company v C:SARS* (case number 14106)**
 - taxpayer appealed (in terms of section 3(4)(b) of the Income Tax Act, 1962 (the "ITA")) SARS' decision that it was not entitled to be approved as a "public benefit organisation" ("PBO") in terms of section 30(3) of the ITA.
 - whether the taxpayer, an accredited "social housing institution" in terms of the Social Housing Act, 2008 (the "SHA"), had, as its sole or principal object, the carrying on of the development, construction, upgrading, conversion, or procurement of housing units for the benefit of persons whose monthly household income is equal to or less than ZAR15 000 (ie, the public benefit activity as defined in paragraph 3(a) in Part 1 of the Ninth Schedule of the ITA, "**paragraph 3(a) activity**"), considered.
 - whether taxpayer's Memorandum of Incorporation (providing that its main objects include "the development, holding, letting or other disposal of affordable residential accommodation to and for the benefit of low to medium households") was consistent with the paragraph 3(a) activity, considered.
 - whether the paragraph 3(a) activity automatically encapsulates the principal object of any Social Housing Regulator Authority ("SHRA") accredited social housing institution (complying with the SHA and the Housing Code), with the result that SHRA accreditations oblige SARS to register the social housing institution as a PBO, considered.
 - the purpose of accreditation as a social housing institution (ie, which housing organisations qualify for social housing subsidies) and the purpose of PBO status (to relieve the taxpayer of the obligation to pay income and other taxes to the fiscus), compared.
 - whether housing provided to qualifying households at the time it is developed or constructed meant that the taxpayer is later entitled to provide the housing to non-qualifying households, considered.
 - find a copy of this judgment [here](#).

legislation and draft legislation

- **notice 684 | Government Gazette 42464**
 - prescribing the dates upon which employers must furnish returns (EMP501s) in terms of:
 - paragraph 14(3)(a) of the Fourth Schedule to the Income Tax Act, 1962;
 - section 8(2A) of the Unemployment Insurance Contributions Act, 2002; and
 - section 6(2A) of the Skills Development Levies Act, 1999.
 - find a copy of the notice [here](#).
- **Tax Administration Act, 2011**
 - amended draft Common Reporting Standard (“CRS”) Regulations to provide for the implementation of the OECD CRS.
 - due date for comments: **24 June 2019**.
 - find a copy of the draft regulations [here](#).
- **Customs and Excise Amendment Act, 2019**
 - promulgated on **23 May 2019**.
 - find a copy of the Act [here](#).
- **Carbon Tax Act, 2019**
 - promulgated on 23 May 2019.
 - find a copy of the Act [here](#).

advance tax rulings

- **binding class ruling 066 | tax consequences for recipients of shares in an unbundled company**
 - sections 46(1) – paragraph (a) of the definition of “unbundling transaction”; 46(3)(a)(v); and 46(7) of the Income Tax Act, 1962 (the “ITA”).
 - paragraph 76B of the Eighth Schedule to the ITA.
 - binding general ruling 29 (issue 2) dated 1 February 2017.
 - section 8(1)(a)(iv) of the Securities Transfer Tax Act, 2007.
 - this ruling determines the income tax consequences for the recipients of listed shares in a company, following an unbundling of that company by its listed parent company.
 - find a copy of this ruling [here](#).

SARS publications

- Value-Added Tax Act, 1991 | *Frequently Asked Questions: Supplies of Electronic Services* (issue 2).
 - find a copy of the FAQ [here](#).
 - register of all binding class rulings
 - find a copy of the register [here](#).
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exchange control

- exchange control circular no. 10/2019
 - exchange control circular 5/2019 (as per Notice 107 of 2019, *Government Gazette* 42258) wherein Ace Currency Exchange (Pty) Ltd was deleted as an Authorised Dealer in foreign exchange with limited authority, is declared null and void and is replaced by Notice 266 of 2019, *Government Gazette* 42451.
 - find a copy of the circular [here](#).

customs and excise

- draft tariff amendment notices to amend:
 - [Part 1 of Schedule no. 1](#) to insert the provision of carbon emissions tax;
 - [Part 3F of Schedule no. 1](#) to provide for the environmental levy on carbon emissions; and
 - [Part 6 of Schedule no. 6](#) to provide for rebates and refunds on carbon tax.
 - due date for comments: extended to **14 June 2019**.
 - find a copy of the explanatory memorandum [here](#).
- draft rule amendment notice and related forms:
 - [draft rule amendment](#) – environmental levy in respect of carbon tax imposed in terms of the Carbon Tax Act, 2019.
 - [DA 185](#) – application form for registration/licensing of customs and excise clients;
 - [DA 185.4A17](#) – operator of an emissions generation facility below the carbon tax threshold (client type 4A17);
 - [DA 185.4B2](#) – manufacturing warehouse (licensing client type 4B2);
 - [DA 180](#) – environmental levy return for carbon tax;
 - [completion notes](#).
 - this account only needs to be submitted in July 2020.
 - [DA 180.01A.1](#) – fuel combustion stationary source;
 - [DA 180.01A.2](#) – fuel combustion non-stationary source;
 - [DA 180.01B](#) – fugitive emission source;
 - [DA 180.01C](#) – industrial process source;
 - [DA 180.02A.1](#) – fuel combustion stationary: allowances
 - [DA 180.02A.2](#) – fuel combustion non-stationary source: allowances
 - [DA 180.02B](#) – fugitive emission source: allowances
 - [DA 180.02C](#) – industrial process source: allowances
 - draft rules have been inserted for implementation of the carbon tax, to provide details on the envisaged carbon tax administration, including the registration of clients, licensing of emissions facilities, carbon tax environmental levy accounting and application of allowances as rebates, all of which need to be synchronised with the essential systems development.
 - due date for comments: **extended to 14 June 2019**.
- SARS discussion document on the rewrite of the excise legislation
 - the accompanying note has been updated to reflect an extension to the due date for comments.

- due date for comments: **extended to 14 June 2019**.
 - find a copy of the discussion document [here](#).
 - find a copy of the accompanying note [here](#).
 - draft rule amendment notice – rules under section 8 of the Customs and Excise Act, 1964 (“CEA”), relating to the reporting of conveyances and goods (“RCG”) for trains.
 - the content of the proposed rules under section 8 is, within the context of the CEA, closely related to Chapter 3 of the Customs Control Act, 2014 (“CCA”). The proposed rules are intended to bring the RCG requirements under the CEA closer to what will be required in terms of the CCA when that Act comes into effect.
 - due date for comments: **24 June 2019**
 - find a copy of the draft notice [here](#).
 - tariff amendment notices | *Government Gazette* 42475:
 - [notice R.747](#) | amendment to Part 1 of Schedule No. 1 by the substitution of tariff subheadings 1001.91 and 1001.99 as well as 1101.00.10 and 1101.00.90 to increase the rate of customs duty on wheat and wheaten flour from 49,07c/kg and 73,61c/kg to 67,51c/kg and 101,26c/kg respectively, in terms of the existing variable tariff formula – Minute 14/2018.
 - implementation: **24 May 2019**.
 - [notice R.748](#) | amendment to Part 2 of Schedule No. 4 by the insertion of rebate items 460.15/7604.29.15/01.08 and 460.15/7604.29.65 in order to create a temporary rebate provision for aluminium bars, rods and profiles for use in the manufacture of stabilisation fins – ITAC Report 597.
 - implementation: **24 May 2019**.
 - [notice R.749](#) | amendment to Part 3 of Schedule No. 2 in order to subject import from Chinese Taipei (Taiwan) to the payment of safeguard duties on certain flat hot-rolled steel products – Extension on ITAC Report 551.
 - implementation: **11 August 2019 up to and including 10 August 2020**.
 - [notice R.750](#) | amendment to Part 3 of Schedule No. 2 in order to subject import from Chinese Taipei (Taiwan) to the payment of safeguard duties on certain flat hot-rolled steel products – Extension on ITAC Report 551
 - implementation: **24 May 2019 up to and including 10 August 2019**.
 - [notice R.751](#) | amendment to Part 1 of Schedule No. 1 by the deletion of tariff subheading 6210.10.20 and the insertion of tariff subheading 6210.10.50 in order to review the description from “disposable panties” to “disposable underwear” as well as increase the rate of customs duty from free to 40% – ITAC Report No. 598.
 - implementation: **24 May 2019**.
 - [notice R.752](#) | amendment to Part 1 of Schedule No. 1 by the substitution of items 8471.30.10, 8471.41.10 and 8471.49.10 to clarify the scope of computers that are subject to payment of *ad valorem* excise duties.
 - implementation: **retrospective effect from 1 April 2019**.
 - [notice R.753](#) | amendment to Part 2B of Schedule No. 1 by the substitution of items 124.11.01, 124.11.05 and 124.11.09 to clarify the scope of computers that are subject to payment of *ad valorem* excise duties.
 - implementation: **retrospective effect from 1 April 2019**.
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international

- public comments received on draft report on tax morale
 - on 10 April 2019, interested parties were invited to provide comments on the OECD's forthcoming publication *What is driving tax morale? An empirical analysis on social preferences and attitudes towards taxation*.
 - find a copy of the compilation of public comments [here](#).
- **Africa | African Continental Free Trade Area Agreement ("ACFTA") enters into force**
 - the requirement that the ACFTA will enter into force 30 days after the 22nd country has deposited its instrument of ratification, was met and the ACFTA will enter into force on 30 May 2019.
- **Angola | Value Added Tax Code gazetted**
 - the Value Added Tax ("VAT") Code, approved by Law No. 7/19, was gazetted on 24 April and replaces the existing Consumption Tax Code. With effect from 1 July 2019, VAT at the rate of 14% will apply to the supply of goods and services and imports. Entities that have chosen not to be immediately subject to the general VAT regime and have a turnover or imports in excess of USD250 000 will be subject to a transitional regime until 2021, when VAT will apply to all taxpayers.
- **Mozambique | taxpayers to report on transfer pricing transactions**
 - with the deadlines for the submission of annual corporate tax returns (31 May 2019) and Annual Tax and Accounting Information Return – M/20 (30 June 2019) fast approaching, taxpayers are reminded that, for the first time, they are required to report on transactions with related entities during 2018 as part of their M/20 return. Taxpayers are also required to prepare a transfer pricing file up to 30 June 2019.
- **Namibia | 2020 budget presented to parliament**
 - the Minister of Finance presented the 2020 Budget to parliament on 27 March 2019.
- **Nigeria | tax administration issues guidelines on mutual agreement procedure**
 - the Federal Inland Revenue Service, on 21 February 2019, published Guidelines on Mutual Agreement Procedure, providing that taxpayers may seek the assistance of the competent authority on matters relating to transfer pricing, dual residence status, withholding tax, permanent establishment and characterisation of income.
- for more on the latest tax developments across the continent, see the ENSafrica *Africa tax in brief* [here](#).

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